

109TH CONGRESS
1ST SESSION

H. R. 2428

To provide for the protection of the last remaining herd of wild and genetically pure American Buffalo.

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 2005

Mr. HINCHEY (for himself and Mr. BASS) introduced the following bill; which was referred to the Committee on Resources

A BILL

To provide for the protection of the last remaining herd of wild and genetically pure American Buffalo.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. YELLOWSTONE BUFFALO PRESERVATION.**

4 (a) SHORT TITLE.—This section may be cited as the
5 “Yellowstone Buffalo Preservation Act”.

6 (b) FINDINGS.—Congress finds the following:

7 (1) More than any other animal, the American
8 buffalo (*Bison bison*) is a wildlife icon of the United
9 States. The American buffalo is the symbol that rep-
10 resents the Department of the Interior. The Amer-

1 ican buffalo is profoundly significant to Native
2 American cultures and, perhaps more than any other
3 wildlife species, has influenced our history.

4 (2) The American buffalo is still under assault,
5 as it was in the late 19th Century when it was near-
6 ly exterminated. At the end of the great slaughter,
7 in which tens of millions of buffalo were killed, only
8 a few hundred wild buffalo remained in the Nation
9 and all were located in Yellowstone National Park.
10 Due to poaching, their numbers were reduced to 25
11 by the year 1900.

12 (3) The offspring of the 25 survivors comprise
13 the Yellowstone buffalo herd and are the only wild,
14 free-roaming American buffalo to continuously oc-
15 cupy their native habitat in the United States.

16 (4) The Yellowstone buffalo herd is genetically
17 unique. Unlike captive ranched buffalo, which are
18 now relatively common, the Yellowstone buffalo herd
19 has never interbred with cattle and has retained its
20 wild character.

21 (5) Because the Park lacks extensive low ele-
22 vation winter habitat that provides bison and elk
23 with access to winter forage, wildlife migrate from
24 the high elevation plateau of Yellowstone National

1 Park to lower elevation habitat adjacent to the Park
2 in winter and spring.

3 (6) The Yellowstone buffalo herd was exposed
4 to the bacterium *Brucella abortus*, which can cause
5 the disease brucellosis, in 1917. The only potential
6 way Brucellosis is transmitted between species is
7 through animal ingestion of contaminated reproduc-
8 tive products. Brucellosis can cause abortions in in-
9 fected animals, but only infectious females who have
10 the bacteria in their reproductive system represent
11 any potential threat of transmission.

12 (7) The risk of transmission between wild buf-
13 falo and cattle was deemed low in a 1992 General
14 Accounting Office report, and again in a 1998 Na-
15 tional Research Council study. In fact, there has
16 never been a confirmed incidence of brucellosis
17 transmission in the wild from buffalo to cattle. Buf-
18 falo with brucellosis and cattle have grazed together
19 for over 50 years in the Jackson Hole area south of
20 Yellowstone without any incident of disease trans-
21 mission.

22 (8) Despite these facts, the National Park Serv-
23 ice, the United States Forest Service, and the State
24 of Montana Department of Livestock have, capture,
25 and kill members of the Yellowstone buffalo herd in

1 an attempt to keep them unnaturally confined within
2 Yellowstone National Park. At the same time, ap-
3 proximately 13,000 Yellowstone elk, some of which
4 also harbor brucellosis, are allowed unfettered access
5 to Federal land outside the Park. Since 1984, nearly
6 4,000 American buffalo have been killed in Montana
7 as a result of this policy. In the winters of 2002
8 through 2005, 811 buffalo were killed by the Fed-
9 eral and State agencies, including 496 buffalo cap-
10 tured and slaughtered by the National Park Service.

11 (9) The key lower elevation habitat needed by
12 American buffalo is on Gallatin National Forest
13 lands adjacent to the north and west sides of the
14 Park. On the north side, taxpayers spent
15 \$13,000,000 in 1999 for a private-Federal land ex-
16 change intended to make low elevation habitat adja-
17 cent to the Yellowstone River accessible to the Yel-
18 lowstone buffalo herd and other wildlife. The land
19 exchange failed to provide adequate protection and
20 conservation benefits for buffalo, therefore key habi-
21 tat is not available to the Yellowstone buffalo herd.

22 (10) On the west side of the Park, the Horse
23 Butte peninsula provides prime wildlife habitat for
24 grizzly bears, trumpeter swans, bald eagles, wolves,
25 and buffalo. The peninsula comprises approximately

1 10,000 acres of primarily Gallatin National Forest
2 Federal lands extending into Hebgen Lake.

3 (11) National Park Service lands have been set
4 aside for the conservation of resources and values
5 and for the enjoyment and use of all citizens. The
6 Federal lands adjacent to the Park represent some
7 of the most valuable and important wildlife habitat
8 in the lower 48 States. They are integrally connected
9 to the health of wildlife residing seasonally in our
10 Nation's oldest national park. Together, the Park
11 and the adjacent Federal lands provide some of our
12 Nation's richest opportunities for recreation, wildlife
13 viewing, family camping, wildlife conservation, fish-
14 ing, and other recreational and sporting activities.
15 These Federal lands should be preferentially man-
16 aged to sustain this rich and diverse wildlife re-
17 source and to provide the public with enjoyment of
18 this National treasure.

19 (c) PURPOSE.—The purpose of this Act is to provide
20 for the protection of the Yellowstone buffalo herd by allow-
21 ing the Yellowstone buffalo herd to freely roam defined
22 Federal land outside of the Park.

23 (d) DEFINITIONS.—For the purposes of this section,
24 the following definitions apply:

1 (1) HAZING.—The term “hazing” means any
2 individual effort to drive away, obstruct, chase,
3 scare, or deter natural movements of wildlife, includ-
4 ing efforts carried out on foot or horseback or ef-
5 forts aided by machinery, aircraft, or any type of
6 noise making device.

7 (2) AGENT.—The term “agent” means any per-
8 son acting on behalf of a State or Federal Govern-
9 ment.

10 (3) PARK.—The term “Park” means Yellow-
11 stone National Park.

12 (4) SECRETARY.—The term “Secretary” means
13 the Secretary of the Interior.

14 (5) YELLOWSTONE BUFFALO HERD.—The term
15 “Yellowstone buffalo herd” means the wild, unfenced
16 buffalo living primarily within Yellowstone National
17 Park.

18 (6) FEDERAL LAND.—The term “Federal land”
19 refers to those lands within the Park and Federal
20 lands adjacent to it on the north and west bound-
21 aries within zones 2 and 3 of the Modified Preferred
22 Alternative Map on page 181 of the 2000 Bison
23 Management Plan for the State of Montana and
24 Yellowstone National Park Final Environmental Im-
25 pact Statement.

1 (e) PROHIBITED ACTS.—

2 (1) IN GENERAL.—No agent may kill, haze, or
3 capture any buffalo on Federal land or land held
4 under Federal conservation easements or use any
5 form of bait to lure buffalo from any Federal land
6 onto private land until the duties under subsection
7 (g) are carried out. This prohibition does not apply
8 to legally-authorized, State-managed buffalo hunts.

9 (2) EXCEPTIONS.—

10 (A) This prohibition shall not apply to an
11 agent or any private party that is found to have
12 been hazing a buffalo if a person is physically
13 endangered or private property was damaged by
14 a buffalo. Neither does this prohibition apply to
15 National Park Service employees who, in the
16 line of duty, need to move buffalo to address
17 immediate physical public safety threats or to
18 end the suffering of an injured buffalo.

19 (B) This prohibition shall not apply to
20 non-lethal Federal research on the prevention,
21 transmission, or elimination of brucellosis in
22 buffalo, as long as the research does not result
23 in the removal of individual buffalo from the
24 Park, diminish the wild, free-roaming status of
25 the buffalo, or identify individual buffalo with

1 techniques such as ear tagging, back tagging,
2 or other methods that detract or diminish the
3 quality of the visitor's experience within Yellow-
4 stone National Park.

5 (f) PENALTIES.—

6 (1) INITIAL VIOLATION.—Any individual found
7 to be in violation of subsection (e) for the first time
8 shall be fined not more than \$5,000 or imprisoned
9 not more than 1 year, or both.

10 (2) SUBSEQUENT VIOLATIONS.—Any individual
11 found to be in violation of subsection (e) after the
12 first such finding shall be fined not more than
13 \$10,000 or imprisoned not more than 2 years, or
14 both.

15 (3) REWARD.—One half of any fine collected
16 under this subsection or \$2,500, whichever is less,
17 shall be paid to any person or persons giving infor-
18 mation which leads to conviction of a violation of
19 this subsection.

20 (4) EXCEPTION.—This subsection shall not
21 apply to a person that is found to have been hazing
22 a buffalo if the person is physically endangered or
23 private property was damaged by a buffalo.

24 (g) DUTIES.—The Secretary and other appropriate
25 Federal agencies shall ensure that the following duties are

1 accomplished not later than 3 years after the date of the
2 enactment of this Act:

3 (1) The Yellowstone buffalo herd is allowed to
4 occupy and use Federal Land without being hazed
5 or confined. These lands shall be made available
6 preferentially for buffalo and wildlife use.

7 (2) Notwithstanding any other provision of law,
8 management authority of the Yellowstone buffalo
9 herd within the Park is under the sole jurisdiction
10 of the National Park Service. The Gallatin National
11 Forest shall provide National Forest Service habitat
12 and consider buffalo as a native resident wildlife
13 species.

14 (3) The Secretary shall not renew or extend any
15 existing grazing permits or leases for grazing allot-
16 ments in zone 3 during the winter or spring.

17 (4) The Secretary shall not issue grazing per-
18 mits or leases for grazing allotments in zone 3 for
19 which no valid permit or lease exists as of the date
20 of the enactment of this Act, and shall permanently
21 retire the allotments from domestic livestock grazing
22 use notwithstanding any other provision of law.

23 (5) The Secretary has negotiated in good-faith
24 to the extent possible with the private land owner in
25 zone 2 in order to make all lands available as bison

1 habitat in the winter and spring seasons as de-
2 scribed in section 1(b)(9).

3 (6) The Secretary has submitted the study re-
4 quired under subsection (h).

5 (7) The National Park Service has disassembled
6 the Stephens Creek Buffalo Capture Facility, and
7 has not constructed a similar facility.

8 (8) The National Park Service has prepared a
9 comprehensive feasibility study assessing the benefits
10 and obstacles of using Yellowstone buffalo to rees-
11 tablish or augment buffalo herds, or both, on public
12 and tribal lands. The study shall provide an objec-
13 tive evaluation of the laws, science, logistics, humane
14 standards, and cost-benefit analysis relevant to such
15 a relocation program.

16 (9) The Secretary has made every effort prac-
17 ticable to allow the Yellowstone buffalo herd to free-
18 ly roam Federal land through incentives and cooper-
19 ative efforts with adjacent private landowners, in-
20 cluding through land and easement acquisition, cat-
21 tle vaccination, fencing, and landowner agreements
22 pertaining to temporal and spatial separation of live-
23 stock from the Yellowstone buffalo herd.

24 (h) STUDY.—Not later than 1 year after the date of
25 the enactment of this Act, the United States Forest Serv-

1 ice shall report to the Energy and Natural Resources
2 Committee of the Senate and the Resources Committee
3 of the House of Representatives regarding—

4 (1) the success or failure of negotiations under
5 subsection (g)(5); and

6 (2) whether the Congress should provide the
7 United States Forest Service or the National Park
8 Service with additional authority to insure that all
9 bison winter habitat is made available in zone 2.

10 (i) PREFERENCE FOR BUFFALO AND OTHER NATIVE
11 WILDLIFE.—The preferential use of Federal land shall be
12 for buffalo and other native wildlife.

13 (j) AUTHORIZATION OF RESEARCH FUNDING.—
14 There is authorized to be appropriated to the Secretary
15 such sums as may be necessary for States, federally recog-
16 nized Indian tribes, and Federal agencies to more fully
17 understand the epidemiology of brucellosis and to develop
18 improved vaccines and treatments to reduce the prevalence
19 of brucellosis in wildlife and livestock.

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